SUBJECT INDEX

ANALYSIS OF THE ERRORS IN RESPONDENTS' RESPONSE

	Page
Respondents' Argument Cannot Be Heard Except on a Cross-Appeal, and Even Then Would Require Remand for Amendment	1
Jury Trial of Diversity	4
Civil Rights Injury	5
Substantial Federal Rights Are at Issue	6
Conclusion	7

TABLE OF AUTHORITIES CITED

Cases

	Page
Collins v. Hardyman, 341 U.S. 651	6
Conley v. Gibson, 355 U.S. 41	5
Gilbert v. David, 235 U.S. 561	4
Griffin v. Breckenridge, 403 U.S. 88	4, 6, 7
Mills v. Electric, 396 U.S. 375	3
Morley v. Maryland, 300 U.S. 185	3
Sinclair v. Boughton, 419 F.2d 129	4
United States v. Ballard, 322 U.S. 78	2
United States v. Guest, 383 U.S. 745	5
United States v. McLeod, 385 F.2d 734	7
Wilbur v. Howard, 70 F.Supp. 930	4

Statutes

United States Code, Title 42, Sec. 1983	2, 6
United States Code, Title 42, Sec. 1985	2
United States Code, Title 42, Sec. 1985, ¶2	6

IN THE

Supreme Court of the United States

October Term, 1971
No. 1279

JAMES SINCLAIR,

Petitioner,

vs.

GLORIA ELLA SPATOCCO, alias GLORIA E. REED, WALTER ROBERT SPATOCCO, alias WALTER ROBERT REED, and ELLA W. HANSEN,

Respondents.

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE.

ANALYSIS OF THE ERRORS IN RESPONDENTS' RESPONSE.

Respondents' Argument Cannot Be Heard Except on a Cross-Appeal, and Even Then Would Require Remand for Amendment.

This Court has requested Respondents to file a response to the Petition for Certiorari. Their Response does not contest any of the 7 Questions Presented for Review by the Petition which prompted the Court to request a response. The Response makes only a collateral attack, almost as much an attack on the judgments of the courts below as an attack on the sufficiency of the complaint, inasmuch as the Response seems to say that the courts below which decided in

favor of Respondents did so on the wrong grounds when these courts should have done so on the grounds that no injury was stated to constitute a cause of action.

Respondents do not claim that further amendment could not make a sufficient complaint; the appeal was taken only because the erroneous decisions of law of the District Court foreclosed jurisdiction, which could *not* be cured by mere amendment.

Although Respondents are wrong, because an injury *was* stated (as corroborated by the decisions of the lower courts being on the basis alone of 42 U.S.C. §1983 and §1985 and "color of law", and not on the more basic, simple, and general basis of "no injury stated"), they should be in this Court foreclosed from so contending since they made no cross-appeal. This lack of cross-appeal was argued to the Court of Appeals (page 15 of Appellant's Reply Brief) and the opinion thereafter by that court without any cross-petition for certiorari should bind Respondents to contend in this Court only in support of that opinion, leaving that court on any remand to decide that issue which appeared to be of little substance to Respondents. *United States v. Ballard*, 322 U.S. 78, 88.

If Respondents' position *were* right, then Petitioner should have certiorari granted so that he could make further amendment of his complaint adequately to show injury once jurisdiction was no longer adjudged absent. Petitioner so argued to the Court of Appeals.

Respondents cannot ask in this Court for a judgment thus more in their favor than granted by the judgment unless they cross-petition for certiorari; if certiorari is denied *on their argument,* Petitioner's rights under the judgment have been lessened contrary to *Morley v. Maryland,* 300 U.S. 185, and *Mills v. Electric,* 396 U.S. 375, 381 (footnote 4): the possibility of amendment available below thereby being abruptly cut off.

The District Court denied Respondent Spatoccos' first motion to dismiss for failure to state a claim upon which relief could be granted, although commenting that "color of law" was lacking. The District Court entertained proceedings thereafter for over half a year until it found diversity also lacking, at which time the judge granted dismissal of the complaint saying that the court lacked both color of law civil rights jurisdiction and diversity jurisdiction. Thus it was decided the complaint was sufficient to grant more than a $10,000 judgment except for "color of law", and diversity in fact, by both the District Court and the opinion of the Court of Appeals.

The docket and minute order expressly mentioned that amendment was allowed, and the Order Dismissing Complaint did not dismiss the action, but merely made it impossible to proceed until the higher courts reversed the crucial errors of law. The Court of Appeals denied a Petition for Mandamus on the grounds that appeal was an adequate remedy.

Because of the Respondents' actual inability to present any substantial response to the substantial 7 Questions Presented for Review, your Petitioner respectfully suggests that the Court might grant certiorari and summarily reverse the judgment of the Court of Appeals for trial in the District Court, without the necessity for argument in this Court, citing only *Griffin v. Breckenridge,* 403 U.S. 88, *Wilbur v. Howard,* 70 F.Supp. 930, and disapproval of any authority of *Gilbert v. David,* 235 U.S. 561, for denial of jury.

Jury Trial of Diversity.

As summarized *supra,* Respondents give no argument at all against Petitioner's substantial point of our heritage of constitutional right of trial by jury. The closest they come is on page 3 to *mis-state* the decision in *Sinclair v. Boughton,* 419 F.2d 129, as a *finding* that Sinclair was a citizen of California. The finding was that *Boughton* was a citizen of California.

The true facts were that Sinclair moved to Michigan in 1962, filed the Boughton suit in 1965 as a citizen of California from his home in Michigan, and in 1966 finally relinquished his California citizenship for citizenship of his Michigan residence. Even *Boughton* in 1966 alleged Sinclair was a Michigan resident, citation on Petition page 16. Once that action had been filed, subsequent changes of citizenship were of course immaterial.

Sinclair has been a citizen of Michigan since 1966, met Respondents in 1968, and filed a diversity action against them in 1969.

Civil Rights Injury.

This Court has expressly mentioned false charges of crime as a sufficient means to deprive one of civil rights. *United States v. Guest,* 383 U.S. 745, 756.

Although Respondents (p. 7) claim Petitioner "demonstrates no . . . threat of arrest . . . and no other . . . conduct of any kind that injured Petitioner or comes within § 1983 or § 1985.", their Response says:

> (Appendix page 9) "threats of wilful and malicious prosecution and arrest under color of California Penal Code §415 and others unspecified."
>
> "signalled from their car and stopped a passing policeman. Plaintiff turned his car quickly away from the scene."
>
> (Response page 12) "Because after the angry and abusive manner in which they had acted up at the house and the fact that they had followed me and that I had caught them lying so much I assumed they were trying to get the police to carry out their evil designs of punishing me in some way by false accusations."
>
> (Appendix page 10) "Plaintiff suffered . . . as a result of defendants' outrageous conduct . . . attempting to have him arrested."

Once the conspiracy is alleged, further evidence will be developed on discovery and presented at trial. *United States v. Guest,* 383 U.S. 745, 757; *Conley v. Gibson,* 355 U.S. 41, 45, 47-48.

Respondents claim they were reacting reasonably to harassment; could a burglar be heard to say he was being harassed when only caught in the act by

a householder? Respondents had, then unknown to Petitioner, defrauded him and committed grand theft against him; Petitioner was only trying to find out what was going on, and doing so in a reasonable manner.

Substantial Federal Rights Are at Issue.

Petition Question V concerns the substantial issue of 42 U.S.C. § 1983 applying to the situation where a policeman is manipulated, and it was not answered by Respondents.

Respondents do make a point of substance, that their conduct was such that federal civil rights laws can reach their conduct only if said laws are interpreted as a general federal tort law concurrent with state tort laws.

However this point is amply answered by the special federal considerations in this action.

Uncontested by Respondents, Petition page 5 stated that the complaint alleged that Petitioner had been a party in a court of the United States and that Respondents had conspired to deter him from attending said court. Under the express provisions of ¶2 of 42 U.S.C. §1985, this is obviously apart from state tort law and well within the federal sphere. This would even have been so before *Griffin v. Breckenridge* overruled *Collins v. Hardyman*, 341 U.S. 651.

Secondly, the harm complained of by Petitioner was not a private simple assault and battery but a scheme to get only the *state authorities* to injure Petitioner, quite unusually denying the usual and equal protection of the laws since known false charges are rare, by obstructing the due course of justice in a State. The

very purpose of the scheme was to scare Petitioner into staying underground, out of court, and not bothering Respondents with their legal obligations—something like intimidating prospective voters by threatening them with false arrest, which historically was successful in the Southern states, as Respondents were successful for a while. *United States v. McLeod,* 385 F.2d 734.

Thirdly, as in *Griffin,* Respondents deprived Petitioner of his equal right to travel freely in interstate commerce from Michigan: the scene of the police incident was California State Highway 134, and the incident deprived him of the use of said highway, as well as others on other dates.

The Amended Complaint stated other rights deprived, such as freedom of speech, petition, and assembly, as well as freedom from unreasonable search and seizure of his person, etc.

Conclusion.

The judgment below is faulty in law on its face and requires certiorari correction if only to prevent establishment of erroneous precedent.

Respectfully submitted,

JAMES SINCLAIR,
Petitioner Pro Se.